(Spl.-H.C.A.S.,C.D.,78-e)

FARAD CONTINUATION SHEET NO.
IN THE HIGH COURT OF BOMBAY AT GOA
APPELLATE SIDE

WRIT PETITION NO.55/2004

Office Note, Office Memoranda of Quorum, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's Orders

Petitioner No.1 in person.

Petitioner No.2 in person.

Mr. A.N.S. Nadkarni, Advocate General with Mr. H.D. Naik, Addl. Govt. Advocate for respondents No.1, 2 and 3.

CORAM : N.N. MHATRE &
P.V. HARDAS, JJ.

DATE : FEBRUARY 16, 2004.

P.C.:

This petition under Article 226 of the Constitution of India prays for issuance of a writ to set aside an order at Annexure 16, dated 3.10.2003, passed by the Dy. Collector and S.D.O. Margao, Goa with a further direction to direct the third respondent to adjudicate proceedings of summary eviction under Section 40(1)(b)(iii) read with 20 of the Goa, Daman and Diu Land Revenue Code, 1968.

2. The Sub-Divisional Magistrate, Margao Goa was called upon to decide the dispute in respect of possession under Section 145 of the Criminal Procedure Code in case No.MAG/145/Cr.P.C./01/2002. The first petitioner herein was party No.I to the proceedings, while respondents No.4 to 8 were Party No.II to the proceedings. The Sub-Divisional Magistrate, Margao Goa by his Judgment dated 12.3.2003 held Party No.II therein to be in possession of the suit property and the possession thereof until evicted therefrom in due course of law. In para 13 of the Order, the Sub-Divisional Magistrate observed that the Sub-Division Magistrate could not determine the title of the parties under the proceedings, but had to decide the possession of the parties over the suit property. The Sub-Divisional Magistrate also felt that the question of appointment of receiver did not arise at all since the Party No.II was in possession of

the suit property. The Sub-Divisional Magistrate further observed in the said para that Party I therein, i.e. the petitioner No.1 before us, may have right and title over the suit property as per the Sale Deed dated 6.7.81 and the proper remedy for him was to approach the Civil Court in the matter. It appears that the first petitioner instead of filing a Civil Suit seeking eviction of Party No.II i.e. respondents No.4 to 8 in this petition from the suit property, approached the Dy. Collector and S.D.O. at Margao, Goa under the provisions of Section 40 of the Land Revenue Code. The Dy. Collector and S.D.O. Margao, Goa by his order impugned in the present petition, held that he did not have jurisdiction for eviction unless the encroachment was on Government land and by referring to the order of the Sub-Divisional Magistrate dated 12.3.2003, suggested to the petitioner to approach the Civil

Court for the reliefs which were claimed.

3. The first petitioner has chosen not to submit any oral arguments before us. The oral arguments have been submitted on his behalf by the second petitioner. The second petitioner, admittedly, was not a party to the proceedings either before the Sub-Divisional Magistrate or the Dy. Collector at Margao. According to him, he has taken up the cudgels on behalf of the petitioner and has sought to argue before us on the basis of the document which is styled as "Appointment of Attorney/Agent". By this document dated 27.1.2004, the first petitioner has appointed the second petitioner to submit oral arguments in this writ petition before us. We do not propose to dilate on this aspect whether by virtue of such a power of attorney a person who is not connected with the proceedings and who is not a

practising lawyer can appear and urge the cause before us.

4. According to us, the impugned order does not require any interference as Section 40 contemplates summary eviction of a person who has been unauthorisedly occupying the land vested in the Central Government. The first petitioner ought to have approached the Civil Court for seeking eviction of respondents No.4 to 8 in the present petition on the basis of his title. The first petitioner instead of choosing to approach the Civil Court, had invoked the jurisdiction of the Dy. Collector under Section 40 of the Land Revenue Code, the reliance on the said provision being wholly misplaced. The first petitioner, if he was not satisfied with the order of the Sub-Divisional Magistrate dated 12.3.2003, ought to have filed appropriate proceedings assailing the said order. Instead of approaching the appropriate forum

by filing appropriate proceedings, this petition has been filed under Article 226 of the Constitution.

5. We have heard the second petitioner for a considerable length of time. Learned Advocate General has also been heard on behalf of respondents No.1, 2 and 3. According to us, this petition is not only misconceived, but is an abuse of the process of Court and, as such, this writ petition is dismissed summarily with costs of Rs.15,000/-.

NISHITA MHATRE, J.

P.V. HARDAS, J.

ssm.

ssm.